

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

Complainants,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

Respondents.

**COMPLAINANTS' BRIEF IN OPPOSITION TO THE RESPONDENTS'
MOTION FOR CONSOLIDATION**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's (the "Commission") Rules of Practice and Procedure (46 C.F.R. 502 et seq.), Complainants, through their Counsel, Marcus A. Nussbaum, Esq. and Seth M. Katz, Esq., respectfully submit this brief in opposition to the motion by "*Specially Appearing*" respondents Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc. (collectively "Respondents") for consolidation of the instant matter together with the matter of *Kairat Nurgazinov v. Michael Hitrinov et al.*, FMC Informal Docket No.: 1953(I).

As set forth below, while Complainants, in principle, do not take issue with Respondents' instant request from the Commission, Complainants respectfully submit that this motion has been made prematurely, and as such, a decision should be deferred until the Commission has made a ruling on the issue of whether or not Respondents have defaulted in this matter and in Informal

Docket No.: 1953(I).¹ If the Respondents have defaulted in instant matter and in Docket No.: 1953(I), then the issue of consolidation will be moot.

Additionally, Complainants do note that consolidation of these matters would result in prejudice to Complainants in both matters on the issue of the number of interrogatories that the Complainants are allowed to serve upon Respondents, as well as the number of depositions that Complainants are allowed to take of the Respondents. Under Rule 203 of the Commission's Rules of Practice and Procedure, Complainants must have leave of the Commission in order to take the deposition of a Respondent if said Respondent has already been deposed (if the parties cannot stipulate to that deposition). If the matters were to remain unconsolidated, the Complainants in these matters would each be allowed to take a single deposition of each Respondent (i.e. each Respondent deposed twice without leave of the Commission). Consolidating Docket No. 1953(I) with this matter effectively deprives Complainant in the Informal matter to take his own depositions of the individual respondents. The same prejudice would be suffered by Complainants with respect to the number of interrogatories which Complainants in each matter otherwise would have been allowed to serve under Rule 205 of the Commission's Rules of Practice and Procedure.

It is therefore respectfully requested that to the extent that the Commission grants Respondents' motion, that steps are taken to preserve Complainants' rights with respect to discovery and avoid the prejudice that would have resulted otherwise as a result of consolidation.

Complainants also note that as of the time of this writing, this is the *fourth* motion filed on both dockets by "specially appearing" respondents and their counsel. As the Commission is aware, on March 31, 2016, the Respondents and their counsel filed a Notice of Special Appearance which was "confined to (i) requesting that response to the March 30, 2016 Order to Show Cause be deferred until resolution of a forthcoming motion to stay this proceeding pending federal court litigation involving the same cars, (ii) requesting such a stay pending disposition of the federal

¹ As stated in the Commission's Order of April 27, 2016, Denying Respondents' Motion for Stay, the Respondents must respond to the Commission's Notice of Default and Order to Show Cause as to Why the Respondents Should Not Be Held in Default by May 4, 2016.

court proceeding, and, if needed, (iii) contesting the sufficiency of service of process of the Complaint herein.”

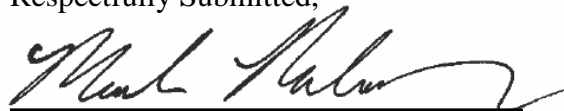
The first two issues in that Notice of Special Appearance have now been resolved by the Commission (and the motions denied), however, it is submitted that Respondents’ instant requested relief now goes beyond the scope of a special appearance. It is well settled that the sole purpose of a special appearance proceeding is to challenge the court's jurisdiction. *See, Nationwide Eng'g & Control Sys., Inc. v. Thomas*, 837 F.2d 345, 347 (8th Cir. 1988). In light of the foregoing, Respondents have effectively waived their special appearance and have now submitted to the jurisdiction of this Commission. It is therefore requested that Respondents now be precluded from contesting the issue of service.

CONCLUSION

In light of the foregoing, a decision on Respondents’ motion should be deferred until after an Order is issued on the Commission’s Notice of Default and Order to Show Cause. To the extent that the Commission is inclined to grant Respondents’ instant motion, Complainants request that steps be taken to avoid any undue prejudice to Complainants with respect to the number of depositions taken and interrogatories served herein. Complainants further request that the Commission Order that Respondents have now waived their special appearance and are precluded from contesting the issue of service in this matter.

Dated: April 29, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

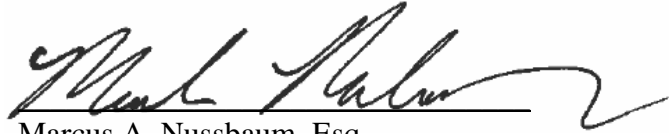
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' BRIEF IN OPPOSITION TO THE RESPONDENTS' MOTION FOR CONSOLIDATION** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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Dated: April 29, 2016 in Brooklyn, New York.